IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7173 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAY HEMRAJBHAI MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7173 of 2004

MR JS YADAV for Petitioner No. 1

MR PRANAV V SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/02/2005

ORAL JUDGEMENT

The short facts of the case are that on 4.11.2001

the flour mill of the petitioner, known as Hemraj Flour Mill being operated at 11/A, Ashwamegh Industrial Estate, Changodar, Tal.Sanand, Dist.Ahmedabad was inspected and certain breaches of provisions of Gujarat Essential Articles (Liceensing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as "the Control Order") were found and the goods were seized by the authority. It appears that thereafter the show cause notice was issued and the petitioner submitted reply contending, inter alia, that it is new business and application is made by the petitioner and it was also stated that no licence is required to be obtained. It was also submitted that the breach is for the first time and therefore it may be condoned. The District Collector did not accept the explanation and ordered for confiscation of stock of Wheat worth Rs.2,06,720/- which was already seized. It appears that the petitioner preferred appeal being Criminal Appeal No.22/02 before the Ld.District & Sessions Judge, Ahmedabad and the Ld.Sessions Judge as per the decision dated 3.3.04 partly allowed the appeal but did not disturb the order passed by the Collector for confiscation of Wheat worth Rs.2,06,720/- and under these circumstances, the petitioner has approached this court by preferring the present petition.

2. I have heard Mr.Yadav for the petitioner and Mr.Raval, Ld.AGP for the respondent authorities. Upon hearing the learned counsel of both sides, it appears that it is an admitted position that the petitioner had no license, as per Control Order, for having stock of essential items including Wheat which has been ordered to be confiscated. Mr.Yadav, Ld.advocate for the petitioner submitted that the petitioner had already applied for getting licence in the year 1999, i.e. on 1.10.1999 and the said application was pending and the petitioner was also communicated about the same as per letter, dated 27.7.00, copy whereof is produced at annexure "I" to the petition and therefore he submitted that when the application was pending it can not be said that the petitioner could not start the business or could not hold the stock of essential items. In support of his submission he has relied upon the provisions of Sub.Clause (4) of Clause (3) of the Control Order and he submitted that as per the said subclause(4) of clause (3) of the Control Order the petitioner is entitled to continue with the business till the application is granted or refused:

3. Sub-clause (4) of Order 3 of the Control Order reads as under:

"(4) Where a person not being a person to whom subclause (1) or (2) applies but subclause (3) does not apply makes an application within fifteen days from the date of this Order, or, as the case may be, the date of application of subclauses (1) or (2), an application for a licence under this Order, such person shall not be deemed to have contravened the subclause (1) or subclause (2) if he carries on business as a dealer, or as the case may be, a producer in any essential article till the day he is granted or, as the case may be, refused a licence, under this Order."

It is pertinent to note that as per sub-clause (1) of Order 3 of the Control Order the language used is that "on and after 20th day of April,1981 no person shall carry on business as dealer". Therefore, there is complete prohibition from 20.4.1981 to carry on the business as a dealer. However, the scheme of the Control Order provides for grant of licence and therefore with a view to see that the existing business of the person concerned on the date when the Control Order came into force is not put to jeopardy, it has been provided that as per subclause (4) if the application is made within 15 days from the date of Control Order, such person shall not be deemed to have contravened subclauses (1) or (2) if he carries on business as a dealer or as the case may be in essential articles till the date his application granted or refused under this order. But, such can not be made applicable to those persons, more particularly, the petitioner who has started business in the year 2000 after about 19/20 years of the Control Order came into force. As such subclause (4) of Order 3 of the Control Order can not be made applicable to the petitioner because the pettiioner has not made application within 15 days from the date of the Control Order. Hence, I can not accept the contention raised on behalf of the petitioner by Mr.Yadav that if the application is made the petitioner shall be entitled to continue the business until the application is granted or refused.

4. Mr.Yadav raised the second contention that it is a breach for the first time and the petitioner has continued with the business for only 11 months. He also submitted that after June, 2004 Wheat is deleted from the list of food stock from the schedule of Control Order and he therefore submitted that lenient view may be taken by this court and the quantum of confiscation which is imposed for confiscation of Wheat worth more than Rs.2

lacs be reduced. It appears that this is not a matter where the petitioner has obtained licence and was doing the business and while doing the business certain irregularities were committed. But, it is a matter where the business of the petitioner of essential commodities was without any licence and therefore it can be said as covered by total prohibition of activity in the absence of licence. Further, if the said contention is accepted by taking lenient view, then in that case, no person who is desirous to do the business in the essential items will apply for licence or will even wait for licence until it is granted. The laudable purpose of the Control Order is to see that the supply of essential items is regulated in such a manner that the State may be in a position to make it available to the public at large and there may not be any artificial shortage created by certain persons dealing in such items which may ultimately result into nonavailability of essential items.

5. Further, even as per the petitioner, without licence, the business is continued for a period of about 11 months and therefore considering all the aspects if the Collector has exercised power for confiscation of stock of essential articles and if the learned sessions judge has by exercising discretion only parly allowed the appeal by not disturbing the order of confiscation of stock of essential articles worth Rs.2,06,720/-, it can not be said that the order passed by the learned sessions judge in appeal is without jurisdiction nor can it be said that the discretion exercised is so perverse which would call for interference by this court in exercise of its powers under Article 226/227 of the Constitution. Further, in view of the fact that the petitioner started his business without licence at all and continued with the same until the inspection was made by the Civil Supplies authorities of the State Govt, I find that it is not a case where discretionary jurisdiction of this court should be exercised in such a matter for reduction of quantum of goods confiscated by the authority and which is confirmed by the learned sessions judge.

6. The further contention raised by Mr.Yadav that now after 4.6.04 the item, i.e. Wheat, is deleted from the list from the schedule is illfounded and can not be accepted for the simple reason that the relevant date will be the date on which the inspection had taken place and on account of subsequent modification of the Control Order in the year 2004 it can not be said that the ex-facie breach committed of the control order on 4.11.2001 should be leniently viewed. Hence, such

contention can not be accepted.

7. In view of the above, petition fails and hence same is dismissed. Rule discharged. In the facts and circumstances, there shall be no order as to costs.

21.2.2005 (JAYANT PATEL,J)